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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,152	07/03/2003	John G. Freshwater	18693.18	6735
27683	7590	08/25/2005	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			GOODMAN, CHARLES	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/613,152 Examiner Charles Goodman	FRESHWATER ET AL. Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 June 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.  
 4a) Of the above claim(s) 27-30 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. The Amendment filed on 6/3/2005 has been entered.

### ***Election/Restrictions***

2. Claims 27-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/26/05. Note last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al (US 6,220,329) in view of Simpson et al (US 5,641,551).

King et al discloses the invention substantially as claimed except that King et al is silent on the claimed four different patterns. However, Simpson et al teaches an apparatus method for cutting webs wherein multiple patterns may be cut out by a cutting assembly. Note Fig. 2. Simpson et al's teachings suggest to one of ordinary skill in the art that multiple pattern cutting is desirable for more efficient run of orders during the operation of the invention. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the invention of King et al with the multiple pattern adaptability, e.g. the claimed four patterns as taught and suggested by Simpson et al in order to facilitate fulfillment of multiple orders of different patterns.

Regarding claim 5, although modified invention of King et al is not explicit on the specific pattern, i.e. dragon tooth, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified invention of King et al with the dragon tooth shape in order to facilitate production of one of various well known shingle designs, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Response to Arguments***

6. Applicant's arguments filed 6/3/2005 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that the combination would not result in the claimed invention, this argument is traversed.

First, it is respectfully set forth that King et al's teachings are not so limiting to just the series of cutting cylinders, since it is old and well known in the art of rotary cutting die cylinders that a series of cylinders may have each cylinder with multiple patterns thereon that renders the final product or products.

Second, Simpson's teachings are not so limiting as Applicant contends for substantially the same reasons set forth above.

Third, due to the fact that changes in sizes and shapes of cylinders and corresponding dies thereon are an obvious matter of design choice to the ordinary artisan, the "circumferential" limitation that Applicant refers is obviated by the combined teachings of the references, since no unexpected results would occur from such a modification. A change in size or shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Fourth, it is the Examiner's position that the modification proposed by the Examiner would be advantageous and obvious to the ordinary artisan since such a modification would increase throughput facilitated by the number of desired patterns that may be obtained from a cutting cylinder.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (571) 272-4508. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (571) 272-4514. In lieu of mailing, it is encouraged that all formal responses be faxed to **(571) 273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

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Art Unit: 3724

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**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

cg   
August 22, 2005

**CHARLES GOODMAN**  
**PRIMARY EXAMINER**